

HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION Nos. 189 AND 22292 OF 2007

DATED 15TH SEPTEMBER, 2014.

BETWEEN

Sri Syed Ale Hassan and ors

.....Petitioners in both

WPs

and

The Municipal Corporation of Hyderabad,
BRKR Buildings, Hyderabad,
Rep. By its Commissioner and ors.

.....Respondents in both WPs

HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION Nos. 189 AND 22292 OF 2007

COMMON ORDER:

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These two Writ Petitions are being disposed by this common order in view of involvement of common subject matter.

Heard the learned Counsel for the petitioners and learned Standing Counsel appearing for Respondents 1 to 4.

Writ Petition No. 189 of 2007 was filed challenging inaction of respondents 1 to 4 in taking action against the illegal and unauthorized constructions taken up by the fifth respondent on an area of 63 square yards in Sy.No.129/55, Banjara Hills, Shaikpet village, Hyderabad even after receipt of

representations dated 22.08.2006 and 21.11.2006 from the petitioners.

The petitioners state that a part of 7000 square yards in Sy.No.129/55 of Shaikpet village, Hyderabad originally belonged to the father of the first petitioner and the predecessor-in-interest of other petitioners 2 to 13. With regard to a part of the said Survey number admeasuring 2,200 square yards, there was a civil litigation between the predecessor-in-interest and one Prahlad Singh who encroached the said extent of the land. The said property was the subject matter of suit in O.S.No. 331 of 1980 on the file of the learned II Additional Chief Judge, City Civil Court, Hyderabad which was filed for recovery of possession and declaration of title against the defendants in the said suit. The said suit was decreed by judgment and decree dated 15.01.1983. Aggrieved by the same, the defendants therein carried the matter in appeal being CCCA No. 70 of 1983 and the same was dismissed by this Court by judgment dated 27.02.1997. LPA.No. 23 of 1997 preferred by the defendants therein against the judgment dated 27.02.1997 was ended in dismissal. SLP preferred thereafter before the Supreme Court was also dismissed. Thereafter, the petitioners herein filed EP.No. 67 of 2003 seeking possession of the property. After taking possession of the said extent of the land from the said Prahlad Singh, the adjacent extent of 7000 square yards was dealt with by the petitioners by entering into a development agreement with a developer and the development work was going on in the site. While so, the petitioners were surprised to see that the fifth respondent along with some other persons was making unauthorized constructions in a part of their

property admeasuring approximately 63 square yards. In these circumstances, they made representations to respondents 1 to 4 seeking to take necessary action against the said unauthorized constructions.

A counter affidavit was filed by Respondents 1 to 4 stating that after receipt of the complaint from the petitioners, they inspected the said area and found that the fifth respondent was raising construction on the said extent with Door No. 8-2-284/A and on enquiry the fifth respondent produced a sale deed bearing No.937/2001 in respect of 42 square meters in which the building was being constructed. On verification, it was found that the said house is situated at Sri Venkateswara Nagar, at Road No.14, Banjara Hills, which is a notified slum area. In respect of 2400 square yards in Ward 8-2 which is known as Venkateswara Nagar Slum it was acquired by the Government of Andhra Pradesh by issuing notification under Section 3(1) of the A.P. Slum Improvement (Acquisition of Land) Act 1956, (for short 'the Act') on 17.01.1983 and final notification under Section 3(2) thereof was acquired on 12.04.1984. It was further stated in the counter affidavit that if the petitioners have any dispute with regard to the title over the disputed land, it is for them to approach the competent Court of law for appropriate relief.

In view of the said averments in the counter affidavit, the petitioners filed Writ Petition No. 22292 of 2007 challenging the notification dated 17.02.1983 issued under Section 3(1) of the Act and also notification dated 12.04.1984 issued under Section 3(2) of the Act by the first respondent.

In the aforesaid Writ Petition, the petitioners stated that for the first time they came to know from the counter affidavit filed in Writ Petition No. 189 of 2007 about the notifications issued by the first respondent under the Act which were issued in respect of 2,400 square yards in Ward 8-2. The petitioners stated that no notice was issued to them before issuing the said notifications. They stated that they are the owners of the entire extent of land and the same has been recorded in the revenue as well as municipal records. They further state that with regard to the said survey number, they have filed LGC No. 56 of 2001 before the Special Court under the AP Land Grabbing (Prohibition) Act against the persons who encroached their land and a survey was conducted as per the orders in IA.No. 92 of 2002 in LGC No. 56 of 2001 and during the survey, issuance of notification under the Act did not come to their notice. Even in the No Objection Certificate issued by the Dy.Collector to the petitioners on 19.01.1983 to sell a part of the land in the said survey number it was stated that Sy.No.129/55 of Shaikpet village is not a Government land. The petitioners further state that in order to protect the said property from encroachments, they had permitted some third party persons to erect huts and reside therein and those structures were purely temporary and the possession of the said persons was purely permissive. When some of the said persons started inducting third parties, the petitioners issued legal notices to such of those occupants, however, they pleaded the petitioners not to take any action and requested to permit them to reside therein. Later some of them have vacated their respective portions on the petitioners demand to vacate the same. The petitioners further submit that

they have no knowledge about issuance of notifications under the Act and that they came to know only from the counter affidavit filed in Writ Petition No. 189 of 2007.

Under these circumstances, the records were called for, which disclosed that notice under Section 3(2) of the Act was issued on 03.11.1983 to one Mr. M.A. Rasheed, President, Venkateswara Nagar, Banjara Hills, to show cause as to why the land enjoyed by ownership or under easement right should not be acquired. A slum certificate available in the record shows that Venkateswara Nagar slum in Ward No. 8-5, Block No.2, Circle No.5 of MCH is included in the list of slums identified during 1979 survey and that there are about 150 houses in the slum from H.No. 8-2-275 to H.No. 8-2-300.

Section 3 of the AP Slum Improvement (Acquisition of Land) Act, 1956 stipulates power to acquire land by publishing a notification in the Andhra Pradesh Gazette and to declare such area to be a slum area. Before publishing such notice the Government shall call upon the owner or any other person who, in the opinion of the Government, is interested in such land to show cause as to why it should not be acquired, and after considering the cause if any shown by any person interested in the land, the Government may pass such orders as they deem fit. Where a notice as foresaid is published in Andhra Pradesh Gazette, the land shall, on and from the beginning of the day on which the notice is so published, vests absolutely in the Government free from all encumbrances. Section 4 thereof stipulates transfer of land in a slum area by Government to the Municipal Council concerned for the purpose of undertaking the

clearance or improvement of the slum area. The persons whose right to title or interest in any land is acquired under the Act shall be entitled to receive compensation under Section 5 thereof. The mode of determination of compensation is stipulated in Section 6 of the Act. Section 8 of the Act prescribes payment of compensation to the persons entitled thereto or deposit of the same in the Court.

From the narration of the facts and circumstances of the case herein above, it is clear that none of the actions prescribed by the provisions of the Act stated supra have been taken in respect of the petitioners despite they being the owners of the property in question. In the circumstances, notification issued under Section 3(2) of the Act and published in the A.P. Gazettee on 12.04.1984 in respect of Venkateswaranagar (Banjara Hills) to an extent of 2,400 square yards is set aside and the first respondent is directed to take further steps under the provisions of the Act in respect of the said extent of the land on account of the notification issued under Section 3(1) of the Act dated 17.02.1983.

Accordingly, the Writ Petitions are allowed to the extent indicated above. Miscellaneous petitions pending consideration if any in the Writ Petitions shall stand closed. No order as to costs.

JUSTICE A. RAMALINGESWARA RAO

DATED 15TH SEPTEMBER, 2014.
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